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OFFICE OF PETITIONS

In re Application of	:	
Wang et al.	:	DECISION DISMISSING
Application No. 10/773,332	:	PETITION
Filed: February 9, 2004	:	
Attorney Docket No. 09095.0009-	:	
01000	:	

This is a decision on the petition filed June 29, 2004, requesting that the above-identified application be accorded a filing date of February 9, 2004, with page 92 of the specification as part of the original disclosure.

On February 9, 2004, applicant filed the above-identified application. On June 3, 2004, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (Notice), stating that the application was accorded a filing date of February 9, 2004; however, it appeared that page 92 of the specification was omitted.

In response, on June 29, 2004, applicant submitted the present petition, the petition fee, and a copy of page 92 of the specification.

Upon review of the record, page 92 of the specification has not been located in the official file. It is noted that the specification identified this application as a divisional application of prior application No. 09/888,840, filed June 25, 2001, and specifically incorporated by reference the disclosure of the prior application.

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The

inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied).

Obviously, in view of the incorporation by reference of Application No. 09/888,840, page 92 of the specification is not new matter if it was a part of the disclosure of Application No. 09/888,840. If applicant desires that page 92 of the specification be added to the application, an amendment should be filed prior to the first action on the merits, which will be considered by the primary examiner.

Accordingly, the Notice mailed on June 3, 2004, was correct in stating that page 92 of the specification appeared to have been omitted. Therefore, the requirement for the omitted page of specification was proper and will not be withdrawn.

Accordingly, the petition is dismissed.

The \$130.00 petition fee will not be refunded because the petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

The Office of Initial Patent Examination is directed to process the application with a filing date of February 9, 2004, using the application papers filed on that date. Page 92 of the specification will not be entered at this time.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

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